

Senate File 445 - Introduced

SENATE FILE 445

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 305)

(SUCCESSOR TO SSB 1073)

A BILL FOR

1 An Act relating to the transfer of real estate and the filing
2 of a mortgage release certificate, providing for a fee and
3 making remedies applicable, and including effective date
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 16.92, Code 2013, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **16.92 Real estate transfer — mortgage release certificate.**

4 1. *Definitions.* As used in this section, unless the context
5 otherwise requires:

6 a. "*Applicant*" means a person authorized to regularly lend
7 moneys to be secured by a mortgage on real property in this
8 state, a licensed real estate broker, a licensed attorney, a
9 participating abstractor, or a licensed closing agent.

10 b. "*Closing agent*" means a closing agent subject to the
11 licensing requirements of chapter 535B.

12 c. "*Division*" means the title guaranty division in the Iowa
13 finance authority, the director of the division, or a designee
14 of the director.

15 d. "*Division board*" means the board of directors of the
16 title guaranty division of the Iowa finance authority.

17 e. "*Mortgage*" means a mortgage or mortgage lien on an
18 interest in real property in this state given to secure a loan
19 in an original principal amount equal to or less than the
20 maximum principal amount as determined by the division board
21 and adopted by the Iowa finance authority pursuant to chapter
22 17A.

23 f. "*Mortgage servicer*" means the mortgagee or a person
24 other than the mortgagee to whom a mortgagor or the mortgagor's
25 successor in interest is instructed by the mortgagee to
26 send payments on a loan secured by the mortgage. A person
27 transmitting a payoff statement for a mortgage is a mortgage
28 servicer for purposes of such mortgage and this chapter.

29 g. "*Mortgagee*" means the grantee of a mortgage. If a
30 mortgage has been assigned of record, the mortgagee is the last
31 person to whom the mortgage is assigned of record.

32 h. "*Mortgagor*" means the grantor of a mortgage.

33 i. "*Participating abstractor*" means an abstractor
34 participating in the title guaranty program.

35 j. "*Payoff statement*" means a written statement furnished by

1 the mortgage servicer which sets forth all of the following:

2 (1) The unpaid balance of the loan secured by a mortgage,
3 including principal, interest, and any other charges properly
4 due under or secured by the mortgage, or the amount required to
5 be paid in order to release or partially release the mortgage.

6 (2) The address where payment is to be sent or other
7 specific instructions for making a payment.

8 (3) The legal description, street address, or other
9 description sufficient to identify the property that will be
10 released from the mortgage.

11 2. *Application.* The division may execute and record a
12 certificate of release on behalf of the division in the real
13 property records of each county in which a mortgage is recorded
14 as provided in this section if all of the following are
15 satisfied:

16 a. The applicant submits all of the following in writing to
17 the division:

18 (1) A payoff statement or other documentation of the amount
19 due, acceptable to the division, as evidence that the mortgage
20 does not continue to secure an unpaid obligation due the
21 mortgagee or an unfunded commitment by the mortgagor to the
22 mortgagee.

23 (2) Evidence that payment was made, including, if
24 available, a statement as to the date the payment was received
25 by the mortgagee or mortgage servicer, with supporting
26 documentation, as evidenced by one or more of the following:

27 (a) A bank check, certified check, escrow account check,
28 real estate broker trust account check, attorney trust account
29 check, or wire receipt, that was negotiated by the mortgagee or
30 mortgage servicer.

31 (b) Other documentary evidence, acceptable to the division,
32 of payment to the mortgagee or mortgage servicer.

33 b. The applicant confirms in writing to the division all of
34 the following:

35 (1) More than thirty days have elapsed since the date the

1 payment was sent.

2 (2) An effective satisfaction or release of the mortgage
3 has not been executed and recorded within thirty days after the
4 date of payment.

5 3. *Notice.*

6 a. Prior to the execution and filing of a certificate of
7 release pursuant to this section, the division shall notify the
8 mortgage servicer in writing of all of the following:

9 (1) The mortgage has not been released.

10 (2) The division's intention to execute and record
11 a certificate of release pursuant to this section after
12 expiration of the thirty-day period following the sending of
13 the notice.

14 b. The notice shall include instructions to notify the
15 division in writing within thirty days of the effective date of
16 the notice of any reason why the certificate of release should
17 not be executed and recorded.

18 c. For purposes of this section, notice may be served by any
19 of the following methods:

20 (1) By certified mail or any commercial delivery service,
21 properly addressed with postage or cost of delivery provided
22 for.

23 (2) By facsimile transmission or electronic mail to an
24 address provided by the mortgage servicer, but only if the
25 mortgage servicer agrees to receive notice in that manner.

26 (3) By publication in a newspaper of general circulation
27 published in each county where the mortgage is recorded once
28 each week for three consecutive weeks after receiving an
29 affidavit by the applicant that service in accordance with the
30 provisions of subparagraph (1) or (2) cannot be made on the
31 mortgage servicer.

32 (4) By otherwise causing the notice to be received by the
33 mortgage servicer within the time it would have been received
34 if notice had been served by certified mail or commercial
35 delivery service.

1 *d.* For purposes of this section, notice is effective under
2 any of the following circumstances:

3 (1) The day after the notice is deposited with a commercial
4 delivery service for overnight delivery.

5 (2) Three days after the notice is deposited with the United
6 States postal service, or with a commercial delivery service
7 for delivery other than by overnight delivery.

8 (3) The day the notice is transmitted, if served pursuant to
9 paragraph "c", subparagraph (2).

10 (4) On the last day of publication, if published pursuant to
11 paragraph "c", subparagraph (3).

12 (5) The day the notice is received, if served by a method
13 other than as provided in paragraph "c", subparagraph (1), (2),
14 or (3).

15 *e.* If, prior to executing and recording the certificate of
16 release, the division receives a written notification setting
17 forth a reason that is satisfactory to the division as to why
18 the certificate of release should not be executed, the division
19 shall not execute and record the certificate of release.

20 4. *Contents.* A certificate of release executed under this
21 section must contain substantially the information set forth
22 as follows:

23 *a.* The name of the mortgagor.

24 *b.* The name of the original mortgagee.

25 *c.* The date of the mortgage.

26 *d.* The date of recording, including the volume and page or
27 other applicable recording information in the real property
28 records of each county where the mortgage is recorded.

29 *e.* A statement that the release was prepared in accordance
30 with this section.

31 5. *Execution.* A certificate of release under this section
32 shall be executed and acknowledged in the same manner as
33 required by law for the execution of a deed.

34 6. *Recording.* The certificate of release or partial
35 release shall be recorded in each county where the mortgage is

1 recorded.

2 7. *Effect.*

3 a. For purposes of a release or partial release of a
4 mortgage, a certificate of release executed under this section
5 that contains the information and statements required under
6 subsection 4 is prima facie evidence of the facts contained in
7 such release or partial release, is entitled to be recorded
8 with the county recorder where the mortgage is recorded,
9 operates as a release or partial release of the mortgage
10 described in the certificate of release, and may be relied upon
11 by any person who owns or subsequently acquires an interest in
12 the property released from the mortgage. The county recorder
13 shall rely upon the certificate of release to release the
14 mortgage.

15 b. Recording of a wrongful or erroneous certificate of
16 release by the division shall not relieve the mortgagor, or the
17 mortgagor's successors or assigns on the debt, from personal
18 liability on the loan or on other obligations secured by the
19 mortgage.

20 c. In addition to any other remedy provided by law, if the
21 division through an act of negligence wrongfully or erroneously
22 records a certificate of release under this section, the
23 division is liable to the mortgagee and mortgage servicer
24 for actual damages sustained due to the recording of the
25 certificate of release.

26 d. Upon payment of a claim relating to the recording of
27 a certificate of release, the division is subrogated to the
28 rights of the claimant against all persons relating to the
29 claim.

30 8. *Fee.* The division may charge a fee for services under
31 this section.

32 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
33 immediate importance, takes effect upon enactment.

34 EXPLANATION

35 This bill relates to the transfer of real estate and the

1 filing of a mortgage release certificate, providing for a fee,
2 making remedies applicable, and providing an effective date.

3 Code section 16.92 allows the title guaranty division
4 (division) of the Iowa finance authority to execute and record
5 a mortgage release certificate in each county (county recorder)
6 in which a mortgage is recorded if such mortgage has been
7 paid off but not released of record or has been incorrectly
8 released.

9 The bill reorganizes, consolidates, and amends certain
10 provisions in Code section 16.92 relating to the application
11 process for a certificate of release, notice requirements
12 the division must follow in notifying a mortgage servicer of
13 the division's intention to execute and record a certificate
14 of release upon the division's receipt of a mortgage release
15 application, and execution requirements relating to the
16 certificate of release. The bill specifies that a request for
17 a mortgage release certificate may be made by an applicant,
18 defined in the bill as a person authorized to regularly lend
19 moneys to be secured by a mortgage on real property in this
20 state, a licensed real estate broker, a licensed attorney, a
21 participating abstractor, or a licensed closing agent. The
22 applicant is required to submit certain evidence acceptable to
23 the division and the applicant must confirm in writing that
24 the mortgage has been paid off and that no release of the
25 mortgage has occurred. The bill provides that the certificate
26 of release executed by the division is only required to contain
27 certain basic information about the mortgage and the execution
28 of the certificate and also authorizes the division to charge a
29 fee for services relating to the execution of the certificate
30 of release.

31 Under Code section 16.92, for purposes of a release or
32 partial release of a mortgage, a properly executed certificate
33 of release is prima facie evidence of the facts contained in
34 such release or partial release, is entitled to be recorded
35 with the county recorder where the mortgage is recorded,

1 operates as a release or partial release of the mortgage
2 described in the certificate of release, and may be relied upon
3 by any person who owns or subsequently acquires an interest in
4 the property released from the mortgage. The county recorder
5 is required to rely upon the certificate of release to release
6 the mortgage. In addition to any other remedy provided by
7 law, if the division through an act of negligence wrongfully
8 or erroneously records a certificate of release, the division
9 is liable to the mortgagee and mortgage servicer for actual
10 damages sustained due to the recording of the certificate of
11 release.

12 The bill takes effect upon enactment.